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Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 681

Case No. 742: MAQARI

Against: The Commissioner-General of the United Nations Relief Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 11 July 1993, Ibtisam Musa Maqari, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA), filed an application, containing, inter alia, the following pleas, asking the Tribunal:

"...

b. [To rescind] the decision of the Field Office Director to terminate the Applicant for misconduct. ...

c. [To rescind] the Commissioner General's decision ... rejecting the recommendation of the JAB [Joint Appeals Board] ...

d. [To reinstate] the Applicant to duty, and [to consider] her cessation from work on 7 September 1991 [onwards], as special leave with full pay.

e. [To compensate] the Applicant for the injury, intimidation, humiliation and hardship and obstruction of justice estimated at US$40 000.

f. [To pay] secretarial and legal counselling fees estimated at US$3 000."

Whereas the Respondent filed his answer on 12 November 1993;

Whereas the Applicant filed written observations on 10 February 1994;

Whereas the Applicant submitted an additional statement on 6 October 1994;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 2 July 1989, as a Staff Nurse at the Muzeireeb Health Point, South Area, on a temporary indefinite appointment, which was confirmed on 28 November 1990. With effect from 7 September 1991, the Applicant was suspended without pay, and on 25 November 1991, her service with UNRWA was terminated for misconduct, pursuant to area staff regulation 9.1.

On 22 August 1991, the Area Officer, South Area, informed the Field Personnel Officer, Syrian Arab Republic (SAR), that two Muzeireeb Health Point staff members, the Applicant and a Cleaner, had been arrested on 21 August 1991 and were charged with "issuing false coupons for distributing rations to pregnant [women] and children and sold them."

On 2 September 1991, the Area Officer, South Area, submitted a written report with statements from the two staff members, the Medical Officer of Muzeireeb Health Point, and a copy of the procès-verbal of the criminal investigation by the Syrian authorities. In her statement, the Applicant reported that she had been questioned by Syrian officials on 21 August 1991, and shown UNRWA ration cards. According to her report, she appeared before the prosecution and judge and was asked whether the handwriting on the cards was hers and whether they had been filled in correctly. She responded that the handwriting was not hers and that the cards were improperly

filled in. She was then dismissed as being innocent. The record indicates that testimony was given by others, including a patient at the clinic and her husband, who confessed that they had sold ration cards and said that the Applicant was involved in an arrangement whereby she provided them with ration cards for sale and shared in the profits.

On 4 September 1991, the Director of UNRWA Affairs, SAR, constituted a Board of Inquiry, composed of the Field Health Officer, SAR, the Area Officer, Damascus Area, and the Deputy Field Supply & Transport Officer, SAR. He informed them that the two staff members had been detained on 21 August, on suspicion of having falsified and sold UNRWA ration coupons, which were tendered to two merchants who had reported the matter to the authorities. He asked the Board of Inquiry "to investigate whether the two staff members ... have committed any acts, which are incompatible with their status as UNRWA staff members."

On 5 September 1991, the Field Personnel Officer, UNRWA - SAR, informed the Applicant that she would be suspended from work without pay pending investigation, with effect from 7 September 1991.

On 2 October 1991, the Field Nursing Officer, SAR, informed the Field Health Officer, SAR, that during a field visit to Muzeireeb Health Point, the Medical Officer in Charge conveyed to her "his anxiety because he was threatened [with] murder by [the Applicant's] relatives if any disciplinary action would be taken against her."

On 24 October 1991, the Applicant wrote to the Director General of UNRWA, that the accusation against her had been made by one of her colleagues, who had herself stolen the ration cards, in collaboration with a medical orderly. She complained that her "dismissal" had been unjust and was "designed to replace me by the cousin of [one of the doctors in the clinic]" who she claimed had been appointed in her place. She asked for a "re-investigation" under his supervision as she was "completely innocent of this accusation".

On 5 November 1991, the Board of Inquiry reported its findings to the Director of UNRWA Affairs, SAR. After reviewing the testimony heard, including that of the Applicant, the Board found as follows:

"The Board of Inquiry observed the following:

1. [The Applicant] did not tell the truth:

   a. She denied that she knows the location of [the patient's] house contrary to her written note on [the patient's] Ante Natal card (...) about a Home Visit...

   b. She stated that on 30.7.1991 she had injected [the patient with] inferon while there is no injection slip dated on 30.7.1991 except the one the date of which has been changed from 20 to 30.7.91 (...). Comparison of the number of injections and needles in the register and the number and kind of injection slips, at the two dates confirm[s] that the injection was given on 20.7.1991.

   c. [Name deleted] stated that he did not ... see [the patient] that day [30.7.1991], contrary to [the Applicant's] statement.

2. A relative of [the Applicant] has paid LS [Syrian pounds] 20,000 to the Criminal Police. This raises a question: If she is innocent, why this pay?

3. [The patient] and her husband have confessed to the Criminal Police that they have sold the falsified Authorization forms. Why should they have accused [the Applicant] of having delivered these forms to them if it was not true?"

On 14 December 1991, the Applicant wrote to the Director of UNRWA Affairs, SAR, stating that one of the patients had been found guilty of stealing ration cards from the clinic. She further stated that the Board of Inquiry had "found nothing against me in this sense, and found me innocent of taking any part in stealing the cards, though they found me responsible for negligence." She asked that her case be reconsidered, as the investigation was "not so fair". She claimed that a doctor in the clinic had appointed his cousin in her place. She also noted that she had not been informed of the final decision and had not been asked to return to work.

In a letter dated 25 November 1991, the Director of UNRWA Affairs, SAR, informed the Applicant as follows:

> "... the Board of Inquiry ... to investigate into the incident which took place in Muzeireeb Health Centre has found you guilty of having falsified UNRWA ration coupons and having sold them. By doing so you have proven to be unreliable and you have acted dishonestly in your duty. You have threatened your supervisor.
>
> ...
>
> It has, therefore, been decided to terminate your service for misconduct in the interest of the Agency under area staff regulation 9.1."

On 11 January 1992, the Applicant submitted a request for reinstatement, to the Director of UNRWA Affairs, SAR. On 2 February 1992, the Director of UNRWA Affairs, SAR, replied: "I have reviewed your case and regret that nothing in your letter convinces me to reconsider the decision to terminate you, which is hereby confirmed."

On 14 January 1992, the Applicant lodged an appeal with the Joint Appeals Board (JAB), requesting, inter alia, a copy of the procès-verbal and the minutes of the report of the Board of Inquiry. On 23 February 1992, the Field Administration Officer, SAR, sent to the Applicant a copy of the report of the Board of Inquiry and a copy of the procès-verbal prepared by the Criminal Security Division of the Syrian Police. He noted that "the identity of certain persons mentioned in these reports is not revealed," explaining that "to do otherwise would put the security of these persons at risk."

On 10 May 1993, the JAB forwarded its report to the Officer-in-Charge, Headquarters, UNRWA. Its evaluation and recommendation read as follows:

> "IV. Evaluation and Judgement
>
> a- The findings of the Board of Inquiry do not establish the involvement of the Appellant in the act of ration-coupons forgery and selling. It only reveals untrue and contradictory statements made by the Appellant.

b- The Administration's decision to terminate the Appellant's services with the Agency were tainted by 'loss of confidence' in her, based on having 'valid reasons' to terminate her services in the interest of the Agency. However, the Board cannot conceive these valid reasons the result of which were the termination of the Appellant's service with the Agency together with the consequential social and professional inconveniences caused to her.

c- The decision to terminate the services of the Appellant was triggered by the reporting of ration-coupons forgery and selling from outside the System. Such improprieties the System had failed, until that time, to detect.

V. Recommendation

In view of the foregoing, the Board unanimously makes its recommendation that the Administration's decision of 25 November 1991 in respect of the Appellant be reviewed with a view to reinstating the Appellant in her previous post as Staff Nurse or in any other post commensurate with her qualifications and in a manner that is not disadvantageous to her."

In a letter dated 7 June 1993, the Officer-in-Charge, Headquarters, transmitted a copy of the JAB report to the Applicant. He noted that "there were valid and objective reasons for the Administration to lose confidence in you" and informed her that he was unable to accept the recommendation that she be reinstated.

On 11 July 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant is innocent of the charges against her, and was not found otherwise by the Syrian authorities or by the UNRWA Board of Inquiry. As there is no foundation for the charges of misconduct, the termination is null and void.

2. The decision to terminate the services of the Applicant was motivated by prejudice and discrimination against her.

Whereas the Respondent's principal contentions are:

1. The Commissioner-General has the authority under area staff regulation 9.1 to terminate the appointment of a staff member in the interest of the Agency. The termination of the Applicant's appointment was within the discretionary authority of the Commissioner-General.

2. The decision to terminate the Applicant's appointment was premised on her conduct and was not improperly motivated. There is no evidence or indication of bias or prejudice.

The Tribunal, having deliberated from 21 October to 11 November 1994, now pronounces the following judgement:

I. The main evidence against the Applicant comes from a patient at the clinic where the Applicant worked and this patient's husband. They disclosed to the police an arrangement whereby the Applicant allegedly supplied the patient with forged ration cards for sale to Palestinian refugees, with the profits to be shared equally by the two women. The patient's husband said that the Applicant came to his home on 18 August 1991 and gave his wife seven cards (or twenty-eight coupons) and, as usual, he sold them. This and other related testimony of the patient and her husband was the only evidence relating to the Applicant to be disclosed in the procès-verbal furnished by the police.

The Board of Inquiry concluded that the Applicant did not tell the truth on a number of issues: denying that she knew the location of the patient's house, despite her written notes on the patient's ante-natal card and child record; stating that she had injected the patient on 30 July 1991, when the Board found that the date on the injection slip had been changed from 20 July 1991 to 30 July 1991, and suggesting that the patient was not seen by anybody to have fainted.

The Board of Inquiry also made other findings, which it obviously felt were of importance, such as the fact that the nursing

authorization forms were kept by the Applicant in the mother and child Health Room; that a relative of the Applicant had paid 20,000 Syrian pounds to the Syrian police, the motivation for which the Board questions if the Applicant were innocent; that the patient involved and her husband, having themselves confessed, implicated the Applicant. The Board asks why they should have accused the Applicant falsely.

II. The case against the Applicant on the issue of fraudulently handling the cards, therefore, comprises the evidence of the one patient and her husband and the Applicant's own somewhat dishonest response to questions asked during her arrest and investigation. Is this a sufficient case on which a conclusion could be drawn with any degree of certainty that the Applicant was implicated?

The Board of Inquiry implies that the Applicant was not only untruthful but had in fact delivered the ration cards to the patient and her husband for illegal sale. The actual finding of the Board, however, is merely that the Applicant was untruthful, not that she was guilty of the charges against her. Nor is there any finding by Syrian authorities against the Applicant. The record indicates that, in fact, she was not even charged.

III. The Tribunal's view is that the evidence is not sufficient to establish a finding that the Applicant was involved. Evidence of co-accused must always be looked at sceptically. It can never be regarded as being as reliable as that of a wholly disinterested party, as there could be many reasons why persons who are themselves accused would seek to implicate others. However, their evidence must be looked at in conjunction with the Applicant's own responses. Again there could be reasons other than guilt for the Applicant's untruthful responses, such as fear on her part in the face of accusations. The payment of 20,000 Syrian pounds, whether with or without the Applicant's knowledge, and whether or not it was subsequently repaid, can scarcely be regarded as definitive

evidence. It appears that the money was paid when she was incarcerated in order to effect her release.

IV. The Applicant goes further than simply denying involvement, offering an alibi for 18 August 1991, when it seems she was actually at a training session in Damascus with other staff members. The Agency dismisses this evidence as unimportant. The real issue, according to the Agency, is whether it had valid reasons to terminate the Applicant's services in the interest of the Agency under area staff regulation 9.1. The Agency adopts the stance that it is sufficient for the Agency to believe, on the balance of probabilities, that the Applicant was involved in irregular practices and that the Agency had legitimately lost confidence in her.

By implication, the Agency, therefore, appears to accept that the specific allegations made against the Applicant cannot be substantiated, certainly not with any degree of confidence. This, in the Tribunal's view, is a correct assessment of the evidence, which is clearly inadequate to make a positive finding.

V. If the central allegation against the Applicant, namely her involvement in illicit distribution of coupons, could not be proved, what then of the Agency's action in terminating her employment, pursuant to area staff regulation 9.1? This regulation provides, "The Commissioner-General may at any time terminate the appointment of any staff member if, in his opinion, such action would be in the interest of the Agency."

A decision to terminate an appointment is, of course, within the discretionary power of the Commissioner-General, who must exercise his discretion without improper motives, and in accordance with proper procedures.

The Respondent argues that the decision to terminate the Applicant's appointment was premised on the Applicant's conduct, which caused the Agency to lose confidence in her as an employee. The Respondent says that the decision was based primarily on the

Applicant's response to the charges against her, but notes also that her prior work record was poor. He contends that the Board of Inquiry finding, that the Applicant was untruthful, justified the decision even without a finding that she was guilty of the charges. The Respondent notes that "although she was not formally tried on these charges, there is no substantive evidence to support her claim that she was found to be innocent of those charges", suggesting the unacceptable proposition that she is guilty until proven innocent.

VI. The Tribunal does not accept this argument. A specific charge was made against the Applicant and the Respondent, in dismissing her, explicitly based his decision on the grounds that the Board of Inquiry had "found [her] guilty of having falsified UNRWA return coupons and having sold them." Although now conceding that the Board of Inquiry did not find the Applicant guilty, the Respondent persists in his argument that she really was guilty. Alternatively, he seeks other justifications for dismissing her, without regard to the fundamental requirements of due process. The Applicant should have been given the opportunity of dealing with these matters before her employment was terminated because of them. She should have been able to answer the allegations that her performance was poor or that she had threatened her supervisor if they were to be used as a basis for termination.

The Tribunal's view is that the Respondent acted improperly in purporting to dismiss the Applicant for matters which had not been established, or on which she was not afforded the opportunity to answer. The Tribunal, however, is not unmindful of the genuine concerns of the Respondent, given the generally unsatisfactory picture of the Applicant revealed by this entire episode. Nevertheless, in taking remedial action, the Respondent must act with regard for due process.

VII. For the reasons set forth above, the Tribunal orders the Respondent to pay to the Applicant compensation in an amount equal to two years of her net base salary as of the date of her separation from service.

VIII. The Tribunal makes no further order.

All other pleas are rejected, including the Applicant's requests for an oral hearing and for costs.

(Signatures)

Samar SEN
President

Hubert THIERRY
Member

Francis SPAIN
Member

New York, 11 November 1994

R. Maria VICIEN-MILBURN
Executive Secretary